

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SANTANA OCAMPO,
Petitioner,

v.

HAROLD CLARKE,
Respondent.

Case No. C07-5671 FDB

ORDER DENYING CERTIFICATE
OF APPEALABILITY

This matter comes before the Court on application for certificate of appealability. On May 29, 2008, this Court denied Petitioner's post-conviction habeas corpus petition.

A court will issue a certificate only when a petitioner has made "a substantial showing of the denial of a constitutional right ." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). A petition dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding. Id., at 484-85. Where the district court dismisses a petition on procedural grounds, a certificate of appealability "should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a

1 valid claim of the denial of a constitutional right and that jurists of reason would find it debatable
2 whether the district court was correct in its procedural ruling.” Id., at 484.


3 Petitioner has not met this burden. An evidentiary hearing is not required on issues that can
4 be resolved by reference to the state court record. Totten v. Merkle, 137 F.3d 1172, 1176 (9th Cir.
5 1998). Moreover, Petitioner is only entitled to an evidentiary hearing on claims that, if proven,
6 would entitle him to relief. See, e.g., Tinsley v. Borg, 895 F.2d 520, 530 (9th Cir. 1990). Petitioner
7 fails to set forth a debatable claim that he is entitled to an evidentiary hearing. Concerning the
8 testimony of law enforcement officers and the right of confrontation, it is without debate that
9 Petitioner has failed to show the decision of the Washington appellate court resulted in a decision
10 contrary to, or involved an unreasonable application of, clearly established federal law, or that the
11 state court ruling resulted in a decision that was based on an unreasonable determination of the facts
12 in light of the evidence. The procedural bar of the claim of improper identification procedures is not
13 debatable. Finally, it is not debatable that there was sufficient evidence to convict. Petitioner cannot
14 demonstrate actual innocence.

15 ACCORDINGLY;

16 IT IS ORDERED:

17 The application for Certificate of Appealability [Dkt. #23] is **DENIED**.

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19 DATED this 8th day of July, 2008.

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24 FRANKLIN D. BURGESS
25 UNITED STATES DISTRICT JUDGE
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